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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,135	10/23/2003	Robert Thomas Dran	RD0001	2161

36489 7590 11/30/2004  
KURT LEYENDECKER  
9241 S LARK SPARROW DR.  
HIGHLANDS RANCH, CO 80126

EXAMINER

BAXTER, GWENDOLYN WRENN

ART UNIT PAPER NUMBER

3632

DATE MAILED: 11/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/692,135	DRAN, ROBERT THOMAS	
	<b>Examiner</b>	<b>Art Unit</b>	
	Gwendolyn Baxter	3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/23/03</u> . | 6) <input type="checkbox"/> Other: ____.  |

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This is the first Office Action for application serial number 10/692,135, Apparatus to Secure the Mouth of a Bag Open for Sliding Debris into the Bag filed October 23, 2003.

***Information Disclosure Statement***

The information disclosure statement filed October 23, 2003 has been considered as to the merits.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-13 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. In the present case, there is no support in the as-filed disclosure, via such descriptive means as words, structures, figures, diagrams, formula, etc. for the claim limitation in claim 1, to wit: "wherein one member of the first and second members has a slot formed therein, the slot extending substantially a length of the one member and being adapted to matingly receive the other member of the first and second members...." The as filed disclosure does not provide any variation to slot being on either of the first or the second member. In fact, the disclosure clearly teaches the slot being only on one member and not the other.

*Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-9 and 12-16 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,913,496 to Valdez. The present invention reads on Valdez as follows: Valdez teaches an apparatus comprising a generally rigid self supporting first member or support loop (301) and a second member or retaining loop (201). The first member forms a continuous loop. The loop has at least one substantially straight segment (203, 308). The second member has a slot formed therein. The slot extends substantially a length of the member and is adapted to matingly receive the first member therein along substantially the entire periphery of the first member in a generally parallel orientation to each other with an entire periphery of the flexible bag (402) proximate the mouth sandwich there between. The slot encloses a substantially portion of the first member. The first and second members have complimentary cross sections that snap locked together to secure the portion of the bag sandwiched there between. At least one of the side of the first member has one of a concave and convex cross section. The first member is generally rectangular in cross section and the second member has the slot formed therein. The slot is adapted to wholly enclose at least one side of the first member and cover at least majority portions of two other sides of the first member. The second member includes one or more hook members (206). The hook member is adapted to latch against the first member. The second member forms a continuous loop. The second member comprises a

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generally flexible and rigid material. A support structure is adapted to orientate and hold the apparatus in a generally vertical orientation. The apparatus further comprises a handle member (307).

Claims 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,942,832 to Haas, Jr. The present invention reads on Haas, Jr. as follows: Haas, Jr. teaches an apparatus comprising a support member (A) and a retaining member (C). The support member comprises a self supporting loop of substantially rigid material and having a generally concave outer peripheral surface (D). The retaining member comprises a looped band that is adapted to be received in the concave outer peripheral surface to bias a portion of the flexible bag sandwiched there between against the support member. The looped band comprises a flexible and resilient material.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Valdez in view of U.S. Patent No. 5,454,535 to Thomson et al. Valdez teaches the limitations of the base claim, excluding the apparatus having a spike.

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Thomson teaches an apparatus having a spike. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the apparatus as taught by Valdez to have incorporated the footplate as taught by Thomson for the purpose of anchoring the apparatus in uneven terrain in an upright position to receive refuse or debris.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Valdez in view of U.S. Patent No. 5,009,378 to Linsmeyer et al. Valdez teaches the limitations of the base claim, excluding the apparatus having a footplate.

Linsmeyer teaches an apparatus having a footplate. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the apparatus as taught by Valdez to have incorporated the footplate as taught by Linsmeyer for the purpose of permitting the user means to secure the apparatus in place while refuse or debris is being inserted or raked through the apparatus into a bag.

Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Valdez in view of U.S. Patent No. 6,688,562 to Harvey. Valdez teaches the limitations of the base claim, excluding the apparatus having a protrusion and groove

Harvey teaches an apparatus having a protrusion (135) and groove (134). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the apparatus as taught by Valdez to have incorporated the protrusion and groove as taught by Harvey for the purpose of locking the retaining member and the supporting member together.

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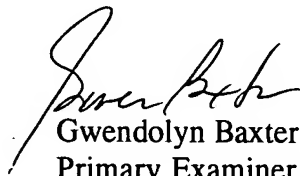
*Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Valdez 6,679,462; Wong 6,209,596 and Groth 5,031,948 teach a retaining and supporting members; Taylor 4,805,858 teaches a spike and Ringer 3,747,653 teaches a leg member.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gwendolyn Baxter whose telephone number is 703-308-0702. The examiner can normally be reached on Monday-Wednesday, 8:00am -5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie A Braun can be reached on 703-308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Gwendolyn Baxter  
Primary Examiner  
Art Unit 3632

November 27, 2004